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ABSTRACT

The Pregnancy Discrimination Act of 1978--which amends Title VII of the Civil Rights Act of 1964--and its impact on educational institutions are discussed. The Act prohibits discrimination against women employees because of pregnancy, childbirth, or related medical conditions. It covers hiring, promotion, firing, and seniority rights as well as fringe benefits such as sick leave and health insurance. A summary of requirements for institutional compliance with the act includes a discussion of the basic requirements of the Act and its effective date; insurance benefits; abortion coverage; pregnancy leave; impact on students, spouses, and dependents; and how the Act will be enforced. A copy of the Act is appended. (SF)

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The Pregnancy Discrimination Act of 1978 and Its Impact on Educational Institutions*

The Pregnancy Discrimination Act of 1978¹ amends Title VII of the Civil Rights Act of 1964² to prohibit discrimination against women employees because of pregnancy, childbirth, or related medical conditions.³ All areas of employment are covered, including hiring, promotion, firing and seniority rights as well as fringe benefits such as sick leave and health insurance. As amended by the Pregnancy Discrimination Act, Title VII now requires employers to treat pregnancy, childbirth and other related conditions the same as other medical conditions which affect employees.

The new law overrides the U.S. Supreme Court's decision of December, 1976, *General Electric v. Gilbert*,⁴ which held that treating pregnancy differently from other disabilities in employee benefit plans did not violate Title VII. The Court reasoned that an employer's denial of benefits to pregnant employees was not discrimination based on sex but rather permissible refusal to cover a unique medical condition.

* This paper could not have been written without the research and analysis by Kristi Vaiden, a recent law school graduate, who has been working with the Project on special assignments.

¹ Public Law 95-555, 92 Stat. 2076.

² Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000 e (1964), was amended in 1972 to cover educational institutions. Such institutions are prohibited from discriminating in employment practices on the basis of sex as well as race, color, national origin, and religion.

³ Such as post-partum disorders. NOTE: The amendment covers pregnancy as a medical disorder. It does not cover "maternity" leave for childrearing purposes. However, child-rearing leave as an employment benefit is covered by other provisions of Title VII. To the extent that such leave is provided by an employer, it must be equally available for both male and female employees. Additionally, employers may not refuse to hire or promote women because of their child-rearing responsibilities.

⁴ 429 U.S. 125 (1976).

Prior to this decision, many employers followed guidelines issued by the Equal Employment Opportunity Commission (EEOC)⁵ which defined discrimination based on pregnancy as a violation of Title VII. The new amendment basically adopts the prior EEOC interpretation and now expressly forbids discrimination in employment because of pregnancy. To clarify the amended Act's requirements, EEOC reaffirmed its prior guidelines with slight modifications to follow the new statutory language.⁶

The following summary clarifies what an institution must do to comply with the Act and how its requirements will be enforced. A copy of the Act is appended.

SUMMARY OF THE PREGNANCY DISCRIMINATION ACT

Which institutions are covered by the Act?

All institutions with 15 or more employees are covered.⁷

What does the Act require?

An institution may not discriminate against women workers because of pregnancy, childbirth, or related medical conditions in all employment related policies and practices, including:

- recruiting and hiring,
- awarding tenure,
- determining or changing compensation,
- promotion,
- class assignments,

⁵ EEOC enforces the provisions of Title VII.

⁶ "Guidelines on Sex Discrimination," 29 C.F.R. 1604, published at 44 Fed. Reg. 23803 (April 20, 1979).

⁷ Although Title VII permits religious institutions to hire and employ workers of a particular religion, such institutions are not exempt from the provisions of the Pregnancy Discrimination Act.

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- seniority,
- granting leaves of absence,
- providing fringe benefits,
- offering tuition assistance,
- providing sabbaticals, and
- all other terms, conditions, or privileges of employment.

The new law prohibits discrimination based on pregnancy both as a health matter and as a disability condition. When a pregnant employee is able to perform her duties, she must be treated like all other healthy workers. When a pregnant worker is not able to work for medical reasons, she must be provided the same benefits as any other disabled worker, including sick leave and disability benefits.

What is the effective date of the Act?

Discrimination against employees on the basis of pregnancy and/or related conditions became illegal on October 31, 1978 when President Carter signed the Pregnancy Discrimination Act. Institutions must immediately ensure that their employment practices do not discriminate on the basis of pregnancy. Illegal practices include mandatory pregnancy leaves, firing women because they are pregnant, and denial of seniority because of pregnancy leave.

To provide an equitable transition from discriminatory fringe benefit programs which were previously sanctioned by the *Gilbert* decision, the Act permits an institution to maintain its present insurance benefit program until April 29, 1979. After that date, an institution must provide the same health and disability insurance for pregnant workers as provided to other sick or disabled employees. This delay was enacted to provide institutions with a reasonable period to investigate ways to cover pregnancy, childbirth and related conditions and to set up administrative mechanisms to provide these benefits.

Can an institution deny health and disability insurance coverage to a pregnant employee because her pregnancy began before April 29, 1979?

No. An employee affected by pregnancy after April 29, 1979, must be covered by health and disability insurance programs to the same extent as other employees. Thus, unless the insurance plan contains a pre-existing condition clause covering other sicknesses and disabilities, a pregnant employee must be covered regardless of when she became pregnant.

INSURANCE BENEFITS

Must an institution provide new fringe benefit programs to comply with the Act?

The Act does *not* require an employer to implement new health insurance, sick leave, or other fringe bene-

fits to employees affected by pregnancy or related conditions. The Act, however, *does* require all fringe benefit programs to be equally available to male and female employees. Employees affected by pregnancy must be protected from health risks and possible wage loss to the same extent as other employees who are "similar in their ability or inability to work."

Must an institution provide fringe benefits for pregnant employees who are neither sick nor disabled?

An employer does not have to allow a pregnant worker to use sick leave or receive disability benefits merely because she is pregnant. If, for example, a pregnant woman is able to work but wishes to stay at home to prepare for childbirth, leave, or disability benefits must be paid only if similar leave or benefits are available to other employees anticipating some kind of disability.

Can an institution refuse to provide benefits to a pregnant employee because she is unmarried?

No. The Pregnancy Discrimination Act does not distinguish between married and unmarried employees. Institutions must treat unmarried employees affected by pregnancy the same as all other employees similar in their ability or inability to work.

Can an institution decrease its benefits to come into compliance with the Act?

An institution may not decrease its contributions to an ongoing benefit program to come into compliance with the Act before October 31, 1979, or prior to the expiration of an existing collective bargaining agreement.

Who pays for increased costs of benefits, if necessary?

An institution must provide sufficient contributions to bring its fringe benefit or insurance program into compliance with the Act.² If, however, on October 31, 1978 costs of fringe benefit programs were divided between an institution and its employees, costs that might be required to comply with the Act may be paid by the institution and its employees in the same proportion. Under no circumstances, however, may an institution

² Pregnancy Discrimination Act of 1978, Public Law 95-555.

³ For example, institutions whose benefit programs violate the Act would either have to increase premium payments sufficiently to cover their share of the incremental cost of equal benefits for pregnant women or pay equal benefits directly to affected women. Senate Report accompanying the Pregnancy Discrimination Act, No. 95-331, p. 8 (May 18, 1977).

Congress rejected arguments that compliance with the Pregnancy Discrimination Act would be too costly for employers. Reviewing the economic impact of already existing state laws prohibiting similar discrimination because of pregnancy, Congress concluded costs of complying with the new Act would not be unreasonable. *Id.*, p. 5.

require male and female employees to pay unequal contributions on the basis of sex or pregnancy.

If an employee benefit plan excludes some health risks, can pregnancy-related conditions also be excluded?

Not necessarily. By defining sex discrimination to include discrimination against pregnant women, the Act rejects the view that employers may treat pregnancy and any of its accompanying medical circumstances as a unique condition, without regard to its functional comparability to other conditions. Under the Act, treatment of pregnant workers cannot be based on pregnancy per se, but must be related to the actual effects of that condition on their ability to work.

An institution could not refuse pregnancy benefits to an employee because the employee was not likely to return to work. However, an employer could restrict benefits for conditions with a predictable duration to employees who subsequently returned to work, provided that pregnancy is not treated differently from other disabilities.

If all insurance premiums are paid by the employee, may an institution offer optional plans which exclude, or offer less coverage for, pregnancy-related medical conditions?

No. Pregnancy-related medical conditions must be treated the same as other medical conditions under any health or disability insurance or sick leave plan "available in connection with employment," regardless of who pays the premiums.¹⁰

ABORTION COVERAGE

If an institution provides health insurance, must coverage include abortion?

The Act permits employers to exclude abortion from health insurance coverage except where the life of the mother would be endangered if the fetus were carried to term or where medical complications have arisen from an abortion. An institution, however, is free to provide coverage for abortions if it so wishes.

Can an institution discriminate against employees seeking abortions in benefit programs other than health insurance coverage?

No. An employer may not exclude abortion coverage from sick leave, disability, or any benefit program other than health insurance. Employees seeking abortions also are protected from discrimination in hiring, training, and any other employment practice or policy.

Are faculty and other employee unions affected by the Act?

Labor organizations are subject to the same re-

quirements as institutions. Therefore, they cannot negotiate collective bargaining agreements which discriminate on the basis of pregnancy and/or related conditions.

Can employees and their representatives negotiate for inclusion of abortion in health insurance coverage?

Yes. Collective bargaining agreements may include health insurance for abortions. Nothing in the Act precludes an employer or union from providing abortion benefits.

Does the Pregnancy Discrimination Act overturn state laws that require employee health insurance plans to cover abortion?

No. The Act does not overturn existing state laws (or prohibit states from enacting laws) which require health insurance coverage for abortion. An institution's health insurance plan may be required to cover hospital and medical costs of all abortions under state laws that prohibit discrimination on the basis of pregnancy and do not exempt abortion from health insurance benefits. Several states have such laws.¹¹

If state law requires an employer to provide disability insurance for a specified period before and after childbirth, does compliance with state law fulfill the employer's obligation under the Pregnancy Discrimination Act?

Not necessarily. The Act does overturn state laws that would require a violation of Title VII. An employer is obligated under the Act to treat employees temporarily disabled by pregnancy in the same manner as employees affected by other temporary disabilities. State laws which restrict benefits for pregnancy-related disabilities, but not for other disabilities, do not excuse employer violation of the Act. If, for example, a state law requires an employer to pay a maximum of 26 weeks benefits for disabilities other than pregnancy-related disabilities but only 6 weeks for pregnancy-related disabilities, the employer must provide benefits for the additional weeks to an employee disabled by pregnancy-related conditions, up to the maximum provided other disabled employees.¹²

PREGNANCY LEAVE

Can a woman be fired because she is pregnant?

No. Pregnancy cannot be a cause for termination. Pregnant employees can be fired only for the same reasons as other employees, such as incompetence.

¹¹ The Attorney General in each state can provide information as to whether abortion must be covered or not. NOTE: The exclusion of abortion from health insurance coverage or other benefits may violate any of three types of state laws—those prohibiting sex discrimination, those requiring disability insurance coverage, and those requiring unemployment compensation.

¹² "Guidelines on Sex Discrimination," 44 Fed. Reg. 23807 (April 20, 1979).

¹⁰ "Guidelines on Sex Discrimination," 29 C.F.R. 1604, published at 44 Fed. Reg. 23803 (April 20, 1979).

Must an institution provide leave for pregnant employees?

Employees who are unable to perform their job duties because of pregnancy, childbirth and/or related conditions, must be provided leave in the same manner as other employees who are physically unable to perform their job duties.

An institution must follow the same procedure that would be used in the case of any other sickness, disability, or need for personal leave. For example, an institution may require a physician's statement about the employee's condition if it requires such statements from employees with other medical conditions. Employees who are temporarily unable to perform their job duties also can be temporarily transferred to a job they can handle.

When may an institution require a pregnant employee to take leave?

An employer may not require women to take leave at a specific, arbitrary time (such as after the seventh month of pregnancy, or for four weeks after childbirth). When a woman takes leave and when she returns must be based on her inability to work. For example, a pregnant woman cannot be required arbitrarily to take leave at the beginning of a semester because she will deliver her child during that semester.

Must an institution fully reinstate an employee who has been granted leave?

An employee returning from pregnancy leave must be fully reinstated, including retention of credit for previous services, accrued retirement benefits, and accumulated seniority. Reinstatement may only be delayed to the same extent as for other conditions. An institution, for example, may not arbitrarily delay a teacher's return to employment until the beginning of a subsequent school year.

**IMPACT ON STUDENTS,
SPOUSES, AND DEPENDENTS**

Are student health insurance programs covered by the Pregnancy Discrimination Act?

Student health insurance programs are covered by the Act only if students receive insurance benefits because of their status as employees of an institution. Title IX of the Education Amendments of 1972, however, prohibits sex discrimination against students (and employees)¹³ in any institution receiving federal monies. In providing medical, hospital, accident or life insurance benefits, services, policies or plans to any of its students, the Title IX regulation¹⁴ prohibits

¹³ 45 C.F.R. 86.51 (1976). See § 86.56-86.57 for regulation prohibiting discrimination against pregnancy in fringe benefit programs.

¹⁴ 45 C.F.R. 86.39 (1976). See § 86.40 for regulation prohibiting discrimination against pregnancy in student health programs.

institutions from discriminating on the basis of sex, including disparate coverage of pregnancy-related conditions.

How does the Pregnancy Discrimination Act affect spouses and dependents?

If an institution's insurance program covers medical expenses of female employees' spouses, then it must equally cover medical expenses of spouses of male employees, including those arising from pregnancy-related conditions.

Male employees, however, are not entitled to pregnancy benefits for their wives if pregnancy benefits are available only to female workers and no other benefits for their spouses. The Act does not require female dependents to be compared with female employees, or that male employees with pregnant wives be compared with pregnant employees.¹⁵

The Act does not require insurance coverage for pregnancy-related conditions of other dependents as long as it excludes the pregnancy-related conditions of the dependents of male and female employees equally.¹⁶

**HOW THE PREGNANCY DISCRIMINATION ACT
WILL BE ENFORCED:¹⁷
GENERAL PROVISIONS OF TITLE VII**

How is a complaint made?

By a sworn complaint form, obtainable from Equal Employment Opportunity Commission (EEOC).

Can complaints of a pattern of discrimination be made as well as individual complaints?

Yes.

Who can make a complaint?

Individuals and/or organizations on behalf of aggrieved employee(s) or applicant(s). Organizations also may file class or pattern complaints without identification of individuals. Members of the commission also may file charges.

What is the time limit for filing complaints?

180 days.

Are institutions notified when a complaint has been filed?

EEOC notifies institutions of complaints within 10 days.

Are names of complainants kept confidential?

Individual complainant's name is divulged to the institution when an investigation is made. However,

¹⁵ Senate Report No. 95-311, p. 6 (May 18, 1977).

¹⁶ "Guidelines on Sex Discrimination," 44 Fed. Reg. 23807 (April 20, 1979).

¹⁷ See generally EEOC COMPLIANCE MANUAL § 411, "Sex Discrimination on the Basis of Pregnancy, Childbirth or Related Medical Conditions."

charges are not made public by EEOC, nor can any of its efforts during the conciliation process be made public by the commission or its employees. If court action becomes necessary, the identity of the parties involved becomes a matter of public record. The aggrieved party and respondent are not bound by the confidentiality requirement.

Can investigations be made without complaints?

No. EEOC can conduct investigations only if charges have been filed.

Can the entire institution be reviewed for other discrimination when a pregnancy complaint is filed?

Yes. EEOC may investigate part or all of an establishment.

Are there record keeping requirements? Does the government have access to records?

No specific record keeping requirements have been promulgated. However, EEOC has the power to require that specified records be kept, relevant to the determination of whether or not violations have occurred. EEOC also is empowered to review all relevant records.

How is the law enforced?

If attempts at conciliation fail, EEOC or the U.S.

Attorney General may file suit. Aggrieved individuals also may initiate suits. The court may enjoin an institution from engaging in unlawful behavior, order appropriate affirmative action, order reinstatement of employees, and award back pay.

Can back pay be awarded?

Yes. For up to two years prior to filing charges with EEOC but not earlier than the effective date of the Act.

Are grievance procedures required?

Grievance procedures are not required, nor is EEOC required to give weight to findings under such procedures.

Is harassment prohibited?

Institutions are prohibited from discharging or discriminating against any employee or applicant for employment because he or she has made a complaint, assisted with an investigation, or instituted proceedings.

For further information contact:

Equal Employment Opportunity Commission
2401 E Street, NW
Washington, DC 20506

THE PREGNANCY DISCRIMINATION ACT OF 1978

To amend title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 701 of the Civil Rights Act of 1964 is amended by adding at the end thereof the following new subsection:

"(k) The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 703(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: *Provided*, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion."

Sec. 2. (a) Except as provided in subsection (b), the amendment made by this Act shall be effective on the date of enactment.

(b) The provisions of the amendment made by the first section of this Act shall not apply to any fringe benefit program or fund, or insurance program which is in effect on the date of enactment of this Act until 180 days after enactment of this Act.

Sec. 3. Until the expiration of a period of one year from the date of enactment of this Act or, if there is an applicable collective-bargaining agreement in effect on the date of enactment of this Act, until the termination of that agreement, no person who, on the date of enactment of this Act is providing either by direct pay-

ment or by making contributions to a fringe benefit fund or insurance program, benefits in violation with this Act shall, in order to come into compliance with this Act, reduce the benefits or the compensation provided any employee on the date of enactment of this Act, either directly or by failing to provide sufficient contributions to a fringe benefit fund or insurance program: *Provided*, That where the costs of such benefits on the date of enactment of this Act are apportioned between employers and employees, the payments or contributions required to comply with this Act may be made by employers and employees in the same proportion: *And provided further*, That nothing in this section shall prevent the readjustment of benefits or compensation for reasons unrelated to compliance with this Act.

Public Law 95-555, 92 STAT. 2076. Signed by President Carter, October 31, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 95-948 accompanying H.R. 6075 (Comm. on Education and Labor) and No. 95-1786 (Conference Comm.).

SENATE REPORT No. 95-331 (Comm. on Human Resources).

CONGRESSIONAL RECORD:

Vol. 123 (1977): Sept. 15, 16, considered and passed Senate.

Vol. 124 (1978): July 18, H.R. 6075 considered and passed House; proceedings vacated and S. 995, amended, passed in lieu.

Oct. 13, Senate agreed to conference report.

Oct. 15, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:

Vol. 14, No. 44 (1978): Oct. 31, Presidential statement.

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